

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.905 of 2019

Abhimanyu Kumar S/o Sri Dhaneshwar Paswan Resident of Village-
Mayaganj, P.S. Barari, Dist.-Bhagalpur

... .. Petitioner/s

Versus

1. The Life Insurance Corporation Of India, Through Its Managing Director
2. The Managing Director, Life Insurance Corporation of India, Central Office, Mumbai
3. The Zonal Manager, Life Insurance Corporation of India, East Central Zone, Patna
4. The Senior Divisional Manager, Life Insurance Corporation of India, Divisional Office, Bhagalpur
5. The Chief Manager, Life Insurance Corporation of India, Bhagalpur Branch-1

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Satya Prakash, Advocate Ms. Smriti Singh, Advocate
For the Respondent/s	:	Mr. Rakesh Kumar, Advocate Mr. Abhimanyu Vatsa, Advocate Mr. Rajni Kant singh, Advocate Mr. Sameer Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 20-01-2025

Heard Mr. Bindhyachal Singh, learned Senior
Advocate for the petitioner and Mr. Abhimanyu Vats, learned
Advocate for the Life Insurance Corporation of India.

2. The petitioner is aggrieved with the order dated 03.06.2017 issued under the signature of Zonal Manager, Life Insurance Corporation of India, East Central Zone, Patna whereby the services of the petitioner as Development Officer has been terminated from the date of receipt of the order in terms of the provisions of Life Insurance Corporation of India Development Officers (Revision of certain terms and



conditions of service) Rules, 2009. The petitioner also prays for quashing of the order dated 17.07.2018 issued by the Managing Director, Life Insurance Corporation, Central Office, Mumbai whereby the appeal preferred by the petitioner against the order of termination also came to rejected.

3. The short facts, which led to the filing of the present writ petition are that after facing prescribed selection process, the petitioner was selected for the post of Apprentice Development Officer by the Life Insurance Corporation of India (hereinafter referred to as 'LIC') on 14.12.2010.

4. On being selected, the petitioner has also completed the requisite training successfully and thereupon he was appointed as Probationary Development Officer vide letter dated 14.05.2011. Having completed the probationary period successfully, the service of the petitioner was confirmed with effect from 15.11.2012, vide letter dated 14.12.2012, the copy of which is marked as Annexure P/4 to the writ petition. The said letter clearly indicated that the work of the petitioner will again be reviewed at the end of twelve months from the date of his confirmation. Furthermore, the services of the petitioner is to be governed by LIC (Staff Regulation, 1960) now in force and amended from time to time and as per the provision of LIC Development Officers (Revision of certain terms and conditions



of service) Rules, 2009.

5. Despite the direction for review of the work of the petitioner, no appraisal letter was served upon the petitioner in the year 2013, 2014 and 2015. It is the contention of the petitioner that for the period 01.12.2012 to 30.11.2013, 01.12.2013 to 30.11.2014 and 01.12.2014 to 30.11.2015 were settled in October, 2016. It is rather unfortunate that despite the aforesaid fact all of a sudden, the petitioner has served upon two letters, both dated 08.11.2016, issued under the signature of Senior Divisional Manager, Bhagalpur wherein the petitioner's performance for appraisal year 2012-13 and 2013-14 issued indicating deficient work performance of the petitioner, seeking show cause as to why the service of the petitioner be not terminated in terms of Sub-Rule 7 of the Life Insurance Corporation of India (Revision of certain terms and conditions of service) Rules, 2009. The petitioner immediately responded to the show-cause letters both dated 08.11.2016 on 12.12.2016 with an undertaking to perform well within subscribed cost limit for the year 2016-17.

6. Notwithstanding the exhaustive show-cause reply of the petitioner and an undertaking to perform well within the subscribed cost limit for the year 2016-17, the impugned order of termination came to be passed.



7. Aggrieved with the order of termination, the petitioner preferred memo of appeal before the Managing Director, LIC of India, Central Office, Mumbai with a prayer to revoke the order of termination by raising several ground therein. However, the same did not find any favour and the appeal of the petitioner also came to be rejected vide order dated 17.07.2018.

8. Mr. Bindhyachal Singh, learned Senior Advocate referring to the facts afore-noted has contended that the terms and conditions of service applicable to the Development Officers regarding the appraisal of their performance have been revised by Rules, 2009 on being notified by the Government of India on 12.11.2009. Clause 3(3) provides that these rules shall be applicable to all appraisal years commencing from 01.12.2009 onwards. Clause 8(1)(b) provides that if the cost ratio in appraisal year is more than 38% and the ratio of the aggregate of the expense in the said year and the immediately preceding appraisal year to the aggregate of the scheduled first year premium income in those two appraisal years exceed 38%, the services of a Development Officer shall become liable for termination.

9. However, the said rule stands amended in the year 2016, duly notified in the Gazette on 01.08.2015. Rule 1 Clause



3 provides that these Rules shall be applicable in respect of appraisal falling due on 01.08.2015 and thereafter. Rule 3 Sub-Clause (b) provides that “(8) notwithstanding anything contained in sub-rules (1) to (7) where the annual remuneration of Development Officer in any preceding year (hereafter in this sub-rule referred to as the “relevant year”) exceeds 50% of the eligible premium of that year and the aggregate of the annual remuneration in the relevant year and the two appraisal years immediately preceding the relevant year exceeds 50% of the aggregate of the eligible premium in those three years, his services shall be liable to be terminated in accordance with Rule 7”.

10. The appraisal for the period 01.12.2012 to 30.11.2013, 01.12.2013 to 30.11.2014 and 01.12.2014 to 30.11.2015 were settled in October 2016. Moreover, the show-cause notice for the first time was served to him simultaneously in the year 2016, and after getting information of his actual position, he worked hard and tried to improve his performance within prescribed expense limit. His cost ratio in the very next appraisal year i.e. 01.12.2015 to 30.11.2016 was 23.80% and even in the current appraisal year ending on 30.11.2017 his cost ratio till May 2017 was 25.8%. Despite the aforesaid facts and the improvement made by the petitioner, the same has not been



taken into consideration while passing the impugned order.

11. Learned Senior Advocate further contended that no opportunity to conform to expense limit was provided to the petitioner in terms of Clause 6 of the Rule 2009, which provided that where the cost in the appraisal year is more than 35% than on first occasion no increment and one decrement; and on second successive occasion no increment and two decrement; and on the third and subsequent successive occasion no increment and two decrements; whereas, the appraisal for the period in question were settled in October, 2016 and during such period the petitioner has never been served any show-cause notice, nonetheless, the petitioner was granted increment for the alleged appraisal periods and no increment and decrement was given to the petitioner prior to passing of the impugned order.

12. The petitioner being the New Development Officer was completely unaware that his performance was below as per the norms provided under the Rule. Had there been any intimation to the petitioner by any authority of the branch regarding his performance, the petitioner would have been certainly improved his performance. The petitioner, thus, cannot be subjected to punishment for the delay and laches on the part of the respondent authorities, since it is the respondents who are under statutory obligation to furnish the work appraisal of the



petitioner year to year basis by granting reasonable opportunity to achieve the fixed cost ratio. In support of the afore-noted contention, learned Senior Advocate has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Dev Dutt vs Union of India & Ors.*, (2008) 8 SCC 725; *Sukhdev Singh vs. Union of India & Ors.*, (2013) 9 SCC 566 and *Margaret Lalita Samuel vs. Indo Commercial Bank*, AIR 1979 SC 102.

13. Countering the contentions pressed on behalf of the petitioner, learned Advocate for the Life Insurance Corporation of India firstly contended that so far as the amendment Rule 2016 is concerned, the same has its limited applicability i.e., for the appraisal year 2014-15 only. For the computation of the period of appraisal year, only first date of the month of joining is taken as the commencement date which simply means that even if the date of joining is any day other than the first day of the month of joining, the period of appraisal year will be taken into consideration from the succeeding/coming month only till the completion of one year. Appraisal falling due before 01st August, 2015, the special Rule 2009 is applicable and the specific appraisal year in the case of petitioner upon which termination action has been taken on 2012-13 and 2013-14.



14. Learned Advocate for the LIC further contended that so far the delay in appraisal is concerned, the same was occasioned due to some technical error in module technical which was resolved in October, 2016 by Information Technology Development but this was not in particular for the petitioner only but to all the Development Officers who were aware of this unwarranted technical issue. The petitioner being the Development Officer working in operational area was well aware of the eligibility criteria within which he was supposed to work in respect of the percentage of eligible cost ratio.

15. To summarize the percentage of eligible cost ratio it is further contended that in the first appraisal year after confirmation the requirement of percentage of eligible Cost Ratio was 24%, whereas in the second appraisal year after confirmation it was 23% and in the third appraisal year after confirmation it was 21%. Performance of the petitioner, compared to the above prescription, the cost ratio was 104.57% for the year 2012-13 and 60.19% for the year 2013-14. The submission of the petitioner of having no knowledge of his business performance-cum-merit list for the reason of delay in appraisal on account of which he did not get the chance of improvement is not at all tenable in view of the fact that the Development Officers get their business performance-cum-merit



list in every month wherein the entire development and activities are mentioned. Moreover, the petitioner has had the access to know their individual business performance of their appraisal period in question as on date in 'GROWMAX' Menu which also includes the Cost Ratio.

16. The termination order was issued after proper consideration of the explanation of the petitioner to the show-cause issued by the Life Insurance Corporation of India, as required under the Rules. The petitioner was also paid salary in lieu of three months and, as such, there is no violation of any terms and condition of the service condition of the petitioner. The facts are admitted that the business performance of the petitioner was not within the prescribed eligibility criteria and the same makes him entitled for disincentive action. The defence of unawareness of work norms or delay in appraisal due to technical latches, would not come in his rescue, in view of the fact that he was well aware of his performance but he did not achieve the target, is the contention of learned Advocate for the Life Insurance Corporation of India.

17. This Court has given anxious consideration to the contention advanced on behalf of the respective parties and also perused the relevant materials available on record including the rules and regulation which are applicable in the case hereunder.



It would be pertinent to state here that at the time of confirmation of the services of the petitioner as Development Officer, it was made clear to the petitioner that his work will again be reviewed at the end of twelve months from the date of confirmation with a clear stipulation that his services shall be governed by the rules and regulation which was/were in force and amended from time to time.

18. Having gone through the relevant prescription of the Rules, 2009 as well as amended Rules, 2016, this Court is of the view that Rules, 2009 shall be applicable to the case of the petitioner till coming into force of amended rule, 2016, as the matter in issue, relates to appraisal for the period of 01.12.2012 to 30.11.2013, 01.12.2013 to 30.11.2014 and 01.12.2014 to 30.11.2015.

19. The Rules, 2009 contains the definition of basic expense limit, which means the expense limit set forth in the table of expense limit below clause (j) of Rule 2. The Rule further made it clear that these instructions shall apply to the salaried Development Officers of the Corporation in its services as on the date of notification of the said rules i.e. 12.11.2009. The Rule made applicable to all the appraisal years commencing from 01.12.2009 and onwards. The Rule, 2009 stipulates the deferment of disincentives. Rule 7(3) clearly speaks that if in



the succeeding year the Development Officer conforms to the prescribed expense limit, no disincentives shall be imposed for the preceding appraisal year and the normal grade increment due on the relevant appraisal date for the preceding year as well as the increment for the succeeding year shall be released, provided that if in the succeeding appraisal year he does not conform to the prescribed expense limit, the disincentives liable to be imposed for the preceding appraisal year and the succeeding appraisal year shall be imposed. The disincentives so imposed, shall be final.

20. Now coming to the Rule 8 of 2009, which stipulates the termination of service in certain cases. Rule 8(1) (b) clearly says that the services of a Development Officer shall become liable for termination if the Cost Ratio in appraisal year is more than 38% and the ratio of the aggregate of the expense in that and the immediately preceding appraisal year to the aggregate of schedule first year premium income in those two appraisal year exceeds 38%.

21. Indisputedly the performance of the petitioner compared to the first and second appraisal year after confirmation was 104.57% for the year 2012-13 and 60.19% for the year 2013-14; thus, the Cost Ratio was exceeding than the limit prescribed. The petitioner failed to conform to bring the



Cost Ratio less than 38% in the questioned appraisal year. Hence, Clause 8(1)(b) of Rules, 2009 would obviously attracted.

22. The averments made in the counter affidavit, although indicate that the Development Officers were duly getting their business performance-cum-merit list in every month, wherein the entire achievement and activities were mentioned apart from their access to the GROWMAX menu, which also included the Cost Ratio, but this contention has been specifically refuted by the petitioner in his rejoinder to the counter affidavit that GROWMAX was not functional in the year 2012, 2013 & 2014 and the petitioner had no access to the same. Had the GROWMAX been functional, the answering respondents would have been certainly served the appraisal report for the year 2012-2013 & 2013-2014 alongwith the show cause notice.

23. Now coming to the question as to whether, non-service of appraisal report within stipulated time makes the impugned order bad and illegal in the case in hand, is placed for consideration before this Court.

24. There is not even a slightest hesitation in accepting the well settled proposition of law that every entry relating to an employee under the State or an instrumentality of the State, whether it is Civil, Judicial, Police or other service,



must be communicated to him within a reasonable period. Non-communication of an entry may adversely affect the employees chance of promotion or getting some other benefit, because when competitive merit is being considered for promotion, a person getting any of the entries of outstanding, very good, good, average, fair and poor should be communicated such entry, so that he may have an opportunity of making representation praying for its upgradation, and thus his representation must be decided fairly and within a reasonable period by the authorities concerned.

25. The Hon'ble Supreme Court in the case of **Dev Dutt (supra)** has held in no uncertain terms that "every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him, he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary." The Hon'ble Court further says, "It is not only when there is a



benchmark but in all cases than an entry must be communicated to a public servant, otherwise there is violation of principle of fairness, which is the soul of natural justice”.

26. The Hon’ble Supreme Court reiterating the law laid down in the case of *Dev Dutt* and *Sukhdev Singh (supra)*, further in the case of *Pankaj Prakash vs. United India Insurance Company Ltd. & Anr., (2020) 7 SCC 590* has held that the judgment of this Court rendered in the afore-noted case is declaratory in nature and the respondent was duty bound to comply with the law laid down by this Court. The Hon’ble Court has categorically observed that non-communication of entries would certainly cause prejudice and thus, every entry in the ACR of the public servant must be communicated to him/her within a reasonable period is legally sound and helps in joining threefold objectives as has been held in the case of *Sukhdev Singh (supra)*.

27. Now coming to the case in hand, it is the admitted position that for the first time the notices and the appraisal report for the period 2012-13 and 2013-14 were served upon the petitioner in the month of November, 2016. The stipulations made in the Rule, 2009 clearly contemplates that the purpose of serving the performance report was to impose disincentives in case the performance of the officer was not upto the mark. It is



also the admitted position that at no point of time any disincentives has been imposed in terms of Rule 7 of the Rules, 2009. If the contention of the respondent would be accepted that the petitioner was well aware and having knowledge of his business performance-cum-merit list through GROWMAX, which was also available with the senior officials, there was no question not to serve the appraisal report and impose the disincentives. The non-service of the appraisal report and the notice in due time, certainly snatched away the petitioner with an opportunity to improve his performance.

28. There is neither any laches on the part of the petitioner, nor the petitioner was at fault and moreover, if there was any technical error in the module, the petitioner cannot be blamed for the same. It would be apt and proper to quote the relevant paragraph of a celebrated judgment of the learned Division Bench of the Bombay High Court, in the case of ***All India Groundnut Syndicate Ltd. vs. Commissioner of Income Tax, Bombay City, [AIR 1954 Bom 232]*** wherein the Court observed as follows:-

“9. But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other words, the Department wants



to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the Income-tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

29. The Hon'ble Supreme Court while describing the expression abuse of power, held in ***Shrisht Dhawan vs. Shaw Brothers, (1992) 1 SCC 534*** that the “abuse of power or *mala fide* exercise of power may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant consideration. The rules, 2009 clearly obligates the authority in terms of clause 6 to impose “no increment and one decrement” on first occasion when the development officer failed to conform the expense limit and likewise, on the second occasion “no increment and two decrement” in similar circumstances. The very object of this clause is to guard the officer to get an opportunity to improve his performance. Non adherence to the aforementioned clause, coupled with non-furnishing of appraisal report and the notice in the relevant period would certainly deprive the petitioner to work harder and achieve more that helps in improving his worth and give better result.



30. Now coming to the impugned order, this Court finds that there is no appreciation on the issue of the settled legal position as has been discussed hereinabove, the action of the respondent lacks fairness as the order of termination is based upon on the appraisal report, which has never been served within stipulated period and thus, thereby no opportunity was accorded to the petitioner to improve his performance. The Hon'ble Apex Court in no uncertain term held that the respondent was duty bound to comply with the law laid down by the Supreme Court in ***Dev Dutt*** and ***Sukhdev Singh (supra)***. The ACR or the appraisal report needs to be communicated to the employee within a reasonable time. In view of the aforesaid settled legal position, this Court finds that the impugned order suffers from serious error and, as such, fit to be set aside.

31. Accordingly the impugned order dated 03.06.2017 issued under the signature of Zonal Manager, Life Insurance Corporation of India, East Central Zone, Patna as well as the order dated 17.07.2018 issued by the Managing Director, Life Insurance Corporation, Central Office, Mumbai are hereby set aside. The petitioner is directed to be reinstated forthwith; however, the petitioner shall not be entitled for any remuneration for the period till he has not discharged any duty.

32. The writ petition stands allowed. Pending



application, if any, also stands disposed off.

33. There shall be no order as to cost.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2025
Transmission Date	NA

